

REMARKS

The specification has been amended to correct typographical and clerical errors and provide corresponding patent numbers for patent applications referenced. Applicant believes no new matter has been added.

Claims 1-20 remain in this application. Claims 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 18 and 19 are currently being amended. New claims 21-35 are currently being presented.

Claim Rejections – 35 USC § 112

Claims 3 and 4 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter with applicant regards as the invention.

Claims 3 and 4 have been amended to obviate the rejection.

Claim Rejections – 35 USC § 102

Claims 1, 5-9, 11, 12, 15 and 16 have been rejected under 35 U.S.C. 102(e) as being anticipated by Palcic et al. (U.S. Pat. 5,827,190).

The claims 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 18 and 19 have been amended to obviate the rejection by more particularly pointing out and claiming the invention. Palcic et al. does not disclose or teach the processing of the fluorescence and references images by correcting for video gamma factor, normalizing the intensity level of the images, generating a ratio image and determining if the ratio image falls below predetermined thresholds. Further, Palcic et al. does not disclose use of a diode laser light source for excitation light, a second light source for reference light and a single image detector to detect both a fluorescence and reference image.

Claim Rejections – 35 USC § 103

Claims 2, 3, 10, 13 and 14 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Palcic et al.

The claims 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 18 and 19 have been amended to obviate the rejection. Further, for reasons stated herein before Palcic et al. fails to teach, suggest or disclose the claimed invention.

Double Patenting

Claims 18-20 have been rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 17-19 of prior U.S. Patent No. 6,364,829.

Applicants believe that the claim amendments to claims 1, 2, 3, 4, 5, 6, 9, 11, 12, 14, 18 and 19 overcome the double patenting rejection.

Further, claims 1-17 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,364,829.

The claim amendments obviate this rejection. However, Applicants are prepared to file a terminal disclaimer to overcome this rejection if need be.

CONCLUSION

In view of the amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone call would expedite the prosecution of this case, the Examiner is invited to call the undersigned at (508) 416-2474.

Respectfully submitted,

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